

## Application for Film Production Tax Credit Instructions

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**ABOUT THIS CREDIT:** Beginning January 1, 2002, the film production tax credit, Section 7-2F-1 NMSA 1978, provides a tax credit for an eligible film production company. Effective January 1, 2006, the amount of the credit is equal to 25% of eligible direct production and direct postproduction expenditures made in New Mexico that are subject to taxation by the State of New Mexico and directly attributable to the production of a film or commercial audiovisual product. The production must be in New Mexico for direct production expenditures. A 20% credit rate applies for expenditures for which the taxpayer receives a new markets tax credit from the federal government. *Important: Expenditures must be directly attributable to film production in New Mexico and subject to taxation by the State of New Mexico.* The film production tax credit shall **not** be claimed for expenditures for which the film production company has delivered a nontaxable transaction certificate pursuant to Section 7-9-86 NMSA 1978.

The 2011 Legislative Session amended the Film Production Tax Credit Act. These instructions include the changes to definitions and requirements therein. The definitions change and new limitations apply to film projects that received approval from the New Mexico Economic Development Department after July 1, 2011.

**To be eligible for the film production tax credit**, a film production company must first be approved by the Film Division of the New Mexico Economic Development Department. After approval, the company may apply for the credit by submitting a completed Form RPD-41229, *Application for Film Production Tax Credit*, to the Taxation and Revenue Department (TRD). TRD approves the credit and issues a document granting it. The application must be submitted within one year of the date of the last direct production or postproduction expenditure in New Mexico. If the amount of the tax credit requested exceeds five million dollars, the application shall also include the results of an audit, conducted by a certified public accountant licensed to practice in New Mexico, verifying that the expenditures have been made in compliance with the requirements of the Film Production Tax Credit Act.

Please allow four to six weeks to process the application.

### Instructions for Completing Form RPD-41229:

**Name/address block** Complete all information requested. If the contact for the permanent records is different, also attach the contact information for the person in charge of the permanent records to the application.

**Line A** - Enter the total qualifying direct production expenditures made in New Mexico directly attributable to the production in New Mexico of the commercial film or audiovisual product for which this credit is claimed.

**Line B** - Enter the total qualifying postproduction expenditures made in New Mexico directly attributable to the production of a commercial film or audiovisual product for which this credit is claimed.

**Line C** - Is the film production company receiving a credit pursuant to the federal new markets tax credit program for expenditures attributable to this production? Circle the answer.

**Line D** - Multiply the sum of lines A and B by 25%, or by 20% if the answer to line C is "yes". This is the amount of film production tax credit to be claimed.

**Line E** - Enter the Project Title as indicated on the New Mexico Film Office Film Production Company Registration Form.

**Certifications** - Certify that the statements set out under *Certifications* are true and correct by placing a checkmark in the box next to each statement that applies.

**Sign** the application, enter your title and the date of signature.

**Mail to:** Taxation and Revenue Department, ATTN: Director's Office, PO Box 8485, Albuquerque, NM 87198-8485.

### Required Supporting Documentation or Form RPD-41229.

Submit the following documentation to support your claim:

- A copy of the approval from the New Mexico Film Office.
- A copy of the final cost-accounting summary for the project with a breakout of the New Mexico costs for each line item.
- The name, address, social security number and amount paid to every resident of New Mexico for whom the company wishes to claim credit for wages and salaries.
- If the company has obtained Type 16 NTTCs from the Taxation and Revenue Department, a listing is needed of every person to whom the company has delivered an NTTC. The list must contain the name, address and New Mexico CRS identification number, if applicable, and the dollar amount of purchases.

**To Claim the Approved Film Production Tax Credit.** Once the approved film production company has received approval from the Film Division and the Taxation and Revenue Department, a completed Form RPD-41228, *Film Production Tax Credit Claim Form*, must be attached to a New Mexico Form PIT-1, CIT-1, S-Corp, or FID-1 return. Subject to certain limitations, the amount of the tax credit may be applied to the tax due on the return, or if the amount of the film production tax credit exceeds the film production company's income tax liability for the tax year, the excess may be refunded.

To obtain authorization for payment of the film production tax credit, the claim must be made on a completed income tax return filed timely after the close of the tax year. A credit claim shall not be divided and submitted with multiple returns or in multiple years.

### Limitations on Receiving the Credit Claimed on a Return.

The total aggregate film production tax credits that may be paid out in any fiscal year are limited to \$50 million. A film production tax credit claimed that is unable to be paid because total claims paid during the current fiscal year, exceeded \$50

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million, shall be placed at the front of the queue for the next fiscal year.

Credits claimed by a film production company may be distributed over multiple years as follows:

- If the credit amount claimed by a film company is less than \$2 million in a tax year, the amount shall be applied or paid immediately upon processing of the income tax return;
- If the credit amount claimed is \$2 million or more, but less than \$5 million in a tax year, half of the amount of the film production tax credit shall be applied or paid immediately upon processing of the income tax return and the remainder shall be paid 12 months following the date of the first payment, and
- If the credit amount claimed is \$5 million or more in a tax year, one third of the amount of the film production tax credit shall be applied or paid immediately upon processing of the income tax return, one third of the film production tax credit shall be paid 12 months following the date of the first payment, and one third of the film production tax credit shall be paid 24 months following the date of the first payment.

Any amount of a credit claim that is carried forward as described above, is *also* subject to the total aggregate film production tax credit limit of \$50 million paid in any fiscal year. For purposes of determining the payment of credit claims that are required to be paid out over multiple years, the secretary of the Taxation and Revenue Department may require that credit claims of affiliated persons be combined into one claim to accurately reflect closely integrated activities of affiliated persons.

Note: No interest shall be paid on any amount refunded under the Film Production Tax Credit Act.

### Completing the Income Tax Return:

Complete the income tax return, CIT-1, PIT-1, S-Corp or FID-1 based on the federal return that you are required to file.

If you are required to file: File New Mexico Form:

Federal Form 1040,	file Form PIT-1;
Federal Form 1120,	file Form CIT-1;
Federal Form 1120S,	file Form S-Corp; or
Federal Form 1041,	file Form FID-1

You will also need to complete the tax credit schedule, CIT-CR, PIT-CR, S-Corp-CR or FID-CR. For tax programs other than PIT, enter the total film production tax credit approved and the amount of the credit that you want applied to the tax liability due on the return. Enter the refundable portion of the tax credit claimed on the first page of the return. For PIT, enter the amount of credit that you are requesting to have applied to the personal income tax liability shown on the return, only. The Department will compare the amounts entered and determine how and when the credit will be paid. No interest shall be paid on any amount refunded under the Film Production Tax Credit Act. Caution: If the amount you request to be applied to the tax liability due on the return is not eligible to be paid immediately, you will be billed for the tax liability not paid, and you may be subject to interest on the unpaid tax due.

NOTE: An eligible film production company that is required to file Federal Form 1065, may apply for a film production tax credit, but may not claim the credit on the New Mexico PTE return. The PTE must pass approved film production tax credit to its owners, members or partners, using Form RPD-41366, *Notice of Distribution of Film Production Tax Credit*. This form must be completed and attached to Form RPD-41229, *Application for Film Production Tax Credit*, at the time of making application for the credit, but no later than the date the credit is approved by TRD. When completing Form RPD-41366 do not complete the fields marked "to be completed by TRD". The Department will complete these fields once the film production tax credit is approved. The amount of tax credit distributed will be based on the percentage of claim provided by the film production company..

For all tax programs, you must attach Form RPD-41228, *Film Production Tax Credit Claim Form*, to your return. Failure to attach this form may result in denial of your claim for the credit.

Do not mail the return to the address on the income tax return. The completed income tax return and Form RPD-41228 must be mailed to: New Mexico Taxation and Revenue, Attn: Film Production Tax Credit, P.O. Box 5418, Santa Fe, New Mexico, 87502-5418. Mailing to this address ensures that your claim is recorded timely.

### Important Definitions:

**"Film"** means a single medium or multimedia program, excluding advertising messages other than national or regional advertising messages intended for exhibition, that:

- is fixed on film, digital medium, videotape, computer disc, laser disc or other similar delivery medium;
- can be viewed or reproduced;
- is not intended to and does not include sexually oriented material harmful to minors or does not otherwise violate a provision of Chapter 30, Article 37 NMSA 1978, and
- is intended for reasonable commercial exploitation for the delivery medium used.

**"Film production company"** means a person that produces one or more films or any part of a film.

**"Direct production expenditure"** means a transaction subject to taxation in New Mexico, including:

- (1) payment of wages, fringe benefits or fees for talent, management or labor to a person who is a New Mexico resident;
- (2) payment to personal services business for the services of a performing artist, if the personal services business (a) pays gross receipts tax in New Mexico on the portion of those payments qualifying for the tax credit, and (b) deducts and remits withheld income tax from payments, excluding wages, an amount equal to the owner's share of net income multiplied by the highest rate for single individuals (4.9%); and

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(3) any of the following provided by a vendor:

- (a) the story and scenario to be used for a film;
- (b) set construction and operations, wardrobe, accessories and related services;
- (c) photography, sound synchronization, lighting and related services;
- (d) editing and related services;
- (e) rental of facilities and equipment;
- (f) leasing of vehicles, not including the chartering of aircraft for out-of-state transportation (New Mexico-based chartered aircraft for in-state transportation directly attributable to the production *shall be* considered a direct production expenditure) provided that only the first \$100 of the daily expenses of leasing a vehicle for passenger transportation on roadways in the state may be claimed as a direct production expenditure;
- (g) food or lodging provided that only the first \$150 of lodging per individual per day is eligible to be claimed as a direct production expenditure;
- (h) commercial airfare if purchased through a New Mexico-based travel agency or travel company for travel to and from New Mexico or within New Mexico that is directly attributable to the production;
- (i) insurance coverage and bonding if purchased through a New Mexico-based insurance agent, broker or bonding agent, and
- (j) other direct costs of producing a film in accordance with generally accepted entertainment industry practice.

**A direct production expenditure does not include:**

- (a) a gift with a value greater than \$25;
- (b) artwork or jewelry, except that a work of art or piece of jewelry may be direct production expenditure if:
  - 1) it is used in the film production; and
  - 2) the expenditure is less than \$2,500, or
- (c) entertainment, amusement or recreation.

**Limit for Performing Artists:** The film production tax credit is limited to \$5,000,000 for the direct production expenses attributable to services rendered by all performing artists in a production.

**"Postproduction expenditure"** means an expenditure for editing, Foley recording, automatic dialogue replacement, sound editing, special effects, including computer-generated imagery or other effects, scoring and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling or addition of sound or visual effects; but not including advertising, marketing, distribution or expense payments.

**Direct production and postproduction expenditures may not exceed the cost of goods and services in an arm's length transaction.**

**Direct production and postproduction expenditures exclude:**

- (a) expenditures for which the film production company has delivered a nontaxable transaction certificate (NTTC) Type 16 pursuant to 7-9-86 NMSA 1978. Type 16 NTTCs may be executed by a qualified production company to purchase property, lease property or purchase services that qualify as production costs;
- (b) expenditures that are not subject to tax by New Mexico; and
- (c) expenditures for which another taxpayer claims the film production tax credit.

**"Vendor"** means a person selling goods or services that has a physical presence in New Mexico and is subject to New Mexico gross receipts tax and income tax or corporate income tax.

**"Physical presence"** means a physical address in New Mexico, but does not include a post office box or other mail drop enterprise unless the physical presence is for a business and the business is providing mail services to a film production company from which a vendor conducts business, stores inventory or otherwise creates, assembles or offers for sale the product purchased or leased by a film production company.

**"Personal services business"** means a business organization that receives payments for the services of a performing artist.

**"New Mexico resident"** means an individual who is domiciled in this state during any part of the tax year or an individual who is physically present in this state for 185 days or more during the tax year; but any individual, other than someone who was physically present in the state for 185 days or more during the tax year and who, on or before the last day of the tax year, changed the individual's place of abode to a place outside New Mexico with the bona fide intention of continuing actually to abide permanently outside New Mexico is not a resident for the purpose of the Film Production Tax Credit Act for periods after that change of abode.

**"Affiliated person"** means a person who directly or indirectly owns or controls, is owned or controlled by or is under common ownership or control with another person through ownership of voting securities or other ownership interests representing a majority of the total voting power of the entity.

**Wages, fringe benefits or fees for talent, management and labor** are eligible for the film production tax credit only when paid to individuals who are New Mexico residents during the time that they work on the project. Form RPD-41271, *Declaration of Residency*, must be completed by the New Mexico resident and retained in the records of the film production company.